

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

MUHLIS AKCABAY,

Civil Case No. CV 07-1679-MO

Petitioner,

v.

MICHAEL CHERTOFF, Secretary of the Department of Homeland Security of the United States; **MICHAEL B. MUKASEY**, Attorney General of the United States; **DIRECTOR OR OFFICER IN CHARGE, NEIL CLARK**, Immigration and Customs Enforcement, **SAMUEL M. CLAWSER IV**, Special Agent with Immigration and Customs Enforcement, **COLUMBIA COUNTY SHERIFF PHILIP W. DERBY** or the person whom has immediate custody and control over Petitioner,

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND FOR ENTRY OF JUDGMENT DISMISSING THIS ACTION WITH PREJUDICE

Respondents.

The above-entitled action was commenced on November 8, 2007, by the filing of a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (CR 1) and a Motion for Temporary Restraining Order. (CR 2).

The records in this action reflect that Petitioner Muhlis Akcabay is a citizen of Turkey who was arrested by Immigration and Customs Enforcement ("ICE") on November 1, 2007, and placed in removal proceedings based on evidence that he had been convicted of an aggravated felony. ICE decided to keep Petitioner in custody pending the completion of removal proceedings, and Petitioner chose not to seek redetermination of that decision by an Immigration Judge. (CR 8, Ex. A). Following his arrest, Petitioner filed his Petition for Writ of Habeas

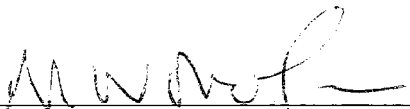
Corpus in which he requested that this Court “order an immediate release of Petitioner with reasonable conditions.” (CR 1, p.9).

This matter came before the Court for hearing on November 14, 2007. Respondents argued that the Motion for Temporary Restraining Order and the Petition for Writ of Habeas Corpus should be denied because 8 U.S.C. § 1226(e) divested the Court of subject matter jurisdiction to review ICE’s discretionary decision to detain the Petitioner. The Court denied the Motion for Temporary Restraining Order and scheduled further briefing on the jurisdictional defense raised by Respondents. Following completion of that briefing, the matter came before the Court for a second hearing on December 17, 2007.

Based on the facts contained in the record in this action, this Court finds that the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 must be denied because the Court lacks subject matter jurisdiction over the Petition. *See* 8 U.S.C. § 1226(e).

It is ORDERED that Petitioner Akcabay’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 is denied and that the Clerk of this Court enter a judgment dismissing this action with prejudice.

Dated: 18 Dec. 07



The Honorable Michael W. Mosman
United States District Court Judge

Submitted by:

Karin J. Immergut
United States Attorney
District of Oregon
Oregon State Bar No. 96314

/s/ James E. Cox, Jr.

Dated: December 17, 2007

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